

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

OTIS GRANT, . 4:16-CV-03529
 . HOUSTON, TEXAS
 PLAINTIFF, . FEBRUARY 21, 2018
VS. . 10:00 A.M.
 .
HARRIS COUNTY, .
 .
DEFENDANT. .
.....

EXCERPT OF TRANSCRIPT OF MOTION HEARING
BEFORE THE HONORABLE KENNETH M. HOYT
UNITED STATES DISTRICT JUDGE

APPEARANCES

FOR THE PLAINTIFF:

Victoria Plante-Northington
PLANTE LAW FIRM PC
5177 Richmond
Suite 1140
Houston, Texas 77056

FOR THE DEFENDANT:

David Adler
David Adler PC
6750 West Loop South
Suite 120
Bellaire, Texas 77401

APPEARANCES - CONTINUED

ALSO FOR THE DEFENDANT:

Seth B. Hopkins
HARRIS COUNTY ATTORNEY'S OFFICE
1019 Congress Street
Fifteenth Floor
Houston, Texas 77002

OFFICIAL COURT REPORTER:

Mayra Malone, CSR, RMR, CRR
U.S. Courthouse
515 Rusk
Room 8004
Houston, Texas 77002
713-250-5787

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PROCEEDINGS

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THE COURT: Did you have any witnesses apart -- I'm not going to take expert testimony, as I think I said up front.

Do you have any witnesses apart from those that have been called?

MR. ADLER: No, Judge, other than the IT's reports, which are --

THE COURT: I have got that. I don't want to really get into it until I hear and I can look at them side by side. I think that's the way I would like to do it.

All right. That concludes the testimonial evidence that the Court will receive in this case. What I think I need from you is -- "you" meaning you in plural -- is the -- is a question or an answer to the question of whether or not the plaintiff's -- and it is before you -- whether or not the plaintiff's motion to amend should be granted or whether or not -- granted or not. And I think it says "opposition," but obviously I don't have any opposition yet because you haven't had a chance to prepare it. But I need to expedite that and I need to get that -- I need to get that in by the end of the week next week. And if you can do it this week, that will be fine. I need to move this off my table one way or the other, and I need to be able to, if necessary, get with you all regarding potential trial dates and exhibits, et cetera. So is

1 that something you can push all the other important stuff aside
2 and get to this little small matter?

3 Okay. I don't need a response from you, Counsel,
4 and I won't take any replies. I just need to know whether or
5 not -- what the basis is for the -- not refusal but for the
6 opposition to your motion to amend the pleadings. All right?

7 MS. PLANTE-NORTHINGTON: Yes.

8 THE COURT: All right. And other than that, I might
9 have asked you all for something at the top of this thing, but
10 I'm not sure. Did I?

11 MR. ADLER: I don't remember anything, Judge, but I'm
12 very concerned about the allegations that have been made and I
13 would like to speak to the motion for sanctions.

14 THE COURT: I generally don't take closing arguments,
15 and the reason I don't is because I don't have the record.
16 There are some documents that I need to review and certainly I
17 might need to go ahead and review the transcript in this case
18 before I -- and I don't really think argument would be of any
19 value to me in light of that. So I don't generally take
20 arguments. If I do need argument, I will notify both sides and
21 I will call you all back at a later time so that I might
22 address you directly on that point.

23 Other than that motion, is there anything else
24 pending that I need to address? I think your motion to amend I
25 have addressed, at least for the time being, that Harris

1 County's motion for summary judgment -- because I think it is
2 convoluted in the sense that it addresses too many things; it
3 brings too much into play. But I will look back at the
4 testimony in this case, and the testimony, meaning Mr. Grant's
5 testimony. I need to look at that in light of my ruling
6 because I might need to withdraw that motion. I don't know
7 what he said in his deposition. I haven't read it, but there
8 are excerpts I believe that you have provided of his testimony.
9 And I don't know if you have provided other excerpts or not.
10 Have you, Counsel?

11 MS. PLANTE-NORTHINGTON: No. That was going to be
12 provided with the response, so I did not provide that.

13 THE COURT: Well, I'm not sure. I think your response
14 was due yesterday, wasn't it?

15 MS. PLANTE-NORTHINGTON: No. You had extended it to
16 the 23rd, last week, when we discussed it because I had so many
17 motions.

18 THE COURT: I did that orally, I guess, on the
19 telephone.

20 MS. PLANTE-NORTHINGTON: On the record. I'm
21 exhausted, so I don't know if I can make the 23rd.

22 THE COURT: Here is what I'm concerned -- and I will
23 get to you. Here is what I'm concerned about: I'm not focused
24 so much on Harris County's 28 -- the 30-exhibit motion as much
25 as I'm concerned about whether or not the plaintiff has, by his

1 deposition, supported or destroyed his cause of action. In
2 other words, I would like to know -- and I'm going to read his
3 testimony. Here is what I'm saying. If you think his
4 testimony stands and it supports his claim for whatever claims
5 you think there are, then -- and I heard you say you didn't
6 question him, so apparently all of the questions that were
7 asked were apparently associated primarily, if not fully, with
8 the question of accommodation. Yeah. So I wouldn't expect any
9 response from Harris County regarding that claim. There may be
10 a claim by Harris County, and I think I heard it at the
11 beginning. Maybe some of the witnesses said that the statute
12 of limitations had run. Maybe that was a lawyer talking in one
13 of the affidavits. But if that's your position, the statute of
14 limitations has run, that is probably part of your filing in
15 this case already, isn't it?

16 MR. HOPKINS: Not to the ADA claim. It's the amended
17 Title VII claim, that we would have a --

18 THE COURT: Amended -- well, but you are going to
19 respond to that. They are seeking to amend and add that, so
20 you respond to that in five pages or less.

21 MR. HOPKINS: Okay.

22 THE COURT: You don't need to give me the history of
23 the case. You just need to give me the case law that says they
24 should not be able to amend their pleadings because. That's
25 what I'm looking for. You can then say in three pages or less,

1 We should be able to amend our pleadings because. And I think
2 that that -- one party doesn't need to wait on the other to
3 respond, so I want both of those by the end of the week.

4 Now, as far as the summary judgment is concerned,
5 the part that I was referring to that concerns me, because I
6 have had to read some things, is whether or not Mr. Grant has
7 in his -- in the question and answering regarding what we know
8 to be the claim before the Court now, whether or not that cause
9 of action has been invalidated by his testimony. Sometimes
10 people get up and will say the darnedest things.

11 MS. PLANTE-NORTHINGTON: Well, we reserve our
12 questions until the time of trial, but he was going to give a
13 declaration to submit with his summary judgment.

14 THE COURT: I don't need his declaration because I
15 have his sworn testimony, and his declaration cannot be --
16 cannot create a fact issue. You cannot testify to one thing is
17 what I'm saying and then create an affidavit that conflicts
18 with that and expect me to believe either document. That is
19 zero gain there.

20 MS. PLANTE-NORTHINGTON: I understand that.

21 THE COURT: So what I'm saying is what you need to
22 respond to in the motion for summary judgment is the question
23 of whether or not the ADA claim is still a viable claim in
24 light of his testimony, because I believe they have attached
25 testimony specifically on that point. Am I correct,

1 Mr. Hopkins?

2 MR. HOPKINS: Yes, Your Honor.

3 THE COURT: That's the part of the summary judgment
4 motion that I want you to respond to. That's the only portion.

5 MS. PLANTE-NORTHINGTON: If the ADA is a viable claim?

6 THE COURT: The ADA claim is his claim, right?

7 MS. PLANTE-NORTHINGTON: The ADA claim, yes, and the
8 spoliation.

9 THE COURT: And what?

10 MS. PLANTE-NORTHINGTON: The ADA claim is his claim.
11 It's a unique case in that --

12 THE COURT: Every case is unique, Counsel.

13 MS. PLANTE-NORTHINGTON: I mean, it is just weird
14 because the violations for which they cite him to retaliate are
15 actually a violation of the ADA.

16 THE COURT: I don't know what that's about. You have
17 got pleadings on file. You know what you said. You know what
18 they are claiming is the problem, and they are claiming that
19 part of the problem is the testimony of your client. Right?

20 MS. PLANTE-NORTHINGTON: I think they are claiming a
21 lot of stuff as it relates to credibility of my client.

22 THE COURT: Okay. Do it your way.

23 MR. ADLER: Judge, I was going to suggest -- I left
24 this civil world --

25 THE COURT: I want your response to what I'm trying to

1 tell you. I want that by the end of next week.

2 MR. ADLER: What I was going to suggest in that
3 regard, Judge, is I left the civil world a long time ago
4 because I don't like this kind of paper intensive case. I like
5 criminal work. If the Court is willing to let us resubmit
6 maybe an amended motion, that would give her the opportunity to
7 understand --

8 THE COURT: No, sir. That just delays and
9 procrastinates. You know what I'm looking for. He has already
10 filed his motion for summary judgment, and that's the only
11 portion of his summary judgment motion that in the Court's
12 opinion I need to make sure that I have not overdone it by
13 denying it. Because the denial of it is a general denial, but
14 when I look at whatever he says, that Hopkins says -- and he is
15 citing to the testimony of Mr. Grant -- then I need to make
16 sure there is some evidence that either creates a disputed fact
17 issue or not. He doesn't need to submit anything else on that.

18 MR. ADLER: So we will not submit anything else?

19 THE COURT: No, no. I need a response by the end of
20 next week on that from plaintiff's counsel, but the other
21 aspect that I just spoke about, I need that about -- about the
22 amended pleading, I need that by the end of the week.

23 MR. ADLER: Got it.

24 MS. PLANTE-NORTHINGTON: I just want to understand
25 what I'm supposed to be writing on, the ADA claim and whether

15:38 1 it is a viable claim or what?

2 THE COURT: Whatever he says in his motion for summary
3 judgment about the ADA claim and specifically referring to your
4 client's testimony is what you need to respond to. I don't
15:38 5 know what else he has got in there that you need to respond to.

6 MS. PLANTE-NORTHINGTON: Okay.

7 THE COURT: But I don't think you need to respond to
8 it. Because if your client in his testimony -- and you go look
9 at the testimony. You have got the depositions. You look at
10 the depositions, and you tell me whether or not his testimony
11 undermines and destroys his ADA claim. That's all I'm asking.
12 Because if he does, then my -- if he does, I'm going to
13 withdraw the summary judgment motion and look at that more
14 carefully. That's all I'm saying. Withdraw my order and look
15 at that more carefully because I haven't looked at it that
15:39 16 carefully. I saw enough stuff in the motion for summary
17 judgment to know that I can't grant summary judgment on all of
18 the bundle of, quote, stuff that was presented to me by Harris
19 County.

15:39 20 MS. PLANTE-NORTHINGTON: So you are saying my client
21 is prohibited from giving a declaration that doesn't even --

22 THE COURT: You are making this up as you go along. I
23 haven't said your client is prohibited from doing anything. I
24 said I don't need one from him. But if you want to do one,
15:39 25 that's fine. But I have just got to have all of that by next

1 weekend. Okay? That's why I said, Do it your way.

2 All right. Thank you very much.

3 *(Court adjourned at 3:39)*

4 * * * *

5 I certify that the foregoing is a correct transcript from
6 the record of proceedings in the above-entitled cause.

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8 Date: April 30, 2018

9 */s/ Mayra Malone*

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11 Mayra Malone, CSR, RMR, CRR
12 Official Court Reporter
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